

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. : <u>09-52</u>
v.	:	DATE FILED: <u>February 12, 2009</u>
HARVEY PENN	:	VIOLATIONS:
MIKHAIL ELAM	:	21 U.S.C. § 846 (conspiracy to possess with
JOHN KERZNER	:	intent to distribute oxycodone - 1 count)
	:	21 U.S.C. § 841(a)(1), (b)(1)(C) (possession
	:	with intent to distribute oxycodone - 4
	:	counts)
	:	18 U.S.C. § 2 (aiding and abetting)
		Notice of forfeiture

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. Percocet and the generic substitutes of Percocet, that is, Endocet and Roxicet, contain oxycodone, a Schedule II controlled substance. OxyContin and a generic substitute, Roxicodone, also contain oxycodone, a Schedule II controlled substance. Pills containing oxycodone are dispensed and distributed by pharmacies normally pursuant to lawful prescriptions written by physicians in the usual course of professional practice and for legitimate medical reasons. Pills containing oxycodone can also be an addictive painkiller and are abused. Pills containing oxycodone are frequently sold by illegal distributors at prices greater than that for which the pills were paid for at a pharmacy.

2. From on or about January 16, 2007, to on or about December 22, 2008, in the Eastern District of Pennsylvania, and elsewhere, defendants

**HARVEY PENN,
MIKHAIL ELAM, and**

JOHN KERZNER

conspired and agreed, together and with others known and unknown to the grand jury, to knowingly and intentionally possess with intent to distribute approximately 83,370 Percocet pills and approximately 162,250 OxyContin pills, both containing a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C).

MANNER AND MEANS

It was a part of the conspiracy that:

3. Defendant MIKHAIL ELAM, who was employed at a medical office in Philadelphia, stole and received blank prescription forms and forged and wrote approximately 2,084 false prescriptions for Percocet and OxyContin and their generic substitutes, all containing oxycodone, for a total of approximately 245,620 pills containing oxycodone, and provided the forged and false prescriptions to other individuals including but not limited to defendants HARVEY PENN and JOHN KERZNER so that defendants PENN and KERZNER and the other individuals could use the false and forged prescriptions to obtain oxycodone from a pharmacy in the Eastern District of Pennsylvania and subsequently sell the oxycodone for profit on the street.

4. Defendants HARVEY PENN and JOHN KERZNER and other individuals, using the false and forged prescriptions, obtained oxycodone from a pharmacy in the Eastern District of Pennsylvania and sold and distributed the oxycodone to defendant MIKHAIL ELAM and other individuals to distribute illegally in the Philadelphia area.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its object, the following overt acts, among others, were committed in Philadelphia, in the Eastern District of Pennsylvania:

1. On or about February 14, 2008, defendant JOHN KERZNER provided false and forged prescriptions for oxycodone to defendant HARVEY PENN which defendant PENN used to obtain oxycodone from a pharmacy.

2. On or about February 27, 2008, defendant MIKHAIL ELAM provided false and forged prescriptions for oxycodone to defendant HARVEY PENN which defendant PENN used to obtain oxycodone from a pharmacy.

3. On or about March 24, 2008, defendant MIKHAIL ELAM provided false and forged prescriptions for oxycodone to defendant HARVEY PENN which defendant PENN used to obtain oxycodone from a pharmacy.

4. On or about June 11, 2008, defendant MIKHAIL ELAM provided false and forged prescriptions for oxycodone to defendant HARVEY PENN which defendant PENN used to obtain oxycodone from a pharmacy.

5. On or about June 11, 2008, defendant JOHN KERZNER provided false and forged prescriptions for oxycodone to defendant HARVEY PENN which defendant PENN used to obtain oxycodone from a pharmacy.

6. On or about September 30, 2008, defendant JOHN KERZNER provided false and forged prescriptions for oxycodone to a witness who was cooperating with the government.

7. On or about October 2, 2008, defendant MIKHAIL ELAM provided false and forged prescriptions for oxycodone to a witness who was cooperating with the government.

8. On or about October 3, 2008, defendant MIKHAIL ELAM provided false and forged prescriptions for oxycodone to a witness who was cooperating with the government.

9. On or about October 3, 2008, defendant JOHN KERZNER provided false and forged prescriptions for oxycodone to a witness who was cooperating with the government.

10. On or about October 17, 2008, defendant JOHN KERZNER met with a witness who was cooperating with the government and stated that he sold pills containing oxycodone to another individual who had a larger distribution network.

11. On or about November 25, 2008, defendant JOHN KERZNER provided \$1,400 in cash and false and forged prescriptions for oxycodone to a Special Agent of the Federal Bureau of Investigation ("FBI") who was working in an undercover capacity.

12. On or about December 22, 2008, defendant JOHN KERZNER arranged to meet with the undercover FBI Agent.

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 14, 2008, in the Eastern District of Pennsylvania,
defendants

**HARVEY PENN,
MIKHAIL ELAM, and
JOHN KERZNER**

knowingly and intentionally possessed with intent to distribute, and aided and abetted the possession with intent to distribute of, a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C), and Title 18, United States Code, Section 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 27, 2008, in the Eastern District of Pennsylvania,
defendants

**HARVEY PENN and
MIKHAIL ELAM**

knowingly and intentionally possessed with intent to distribute, and aided and abetted the
possession with intent to distribute of, a mixture or substance containing a detectable amount of
oxycodone, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C), and
Title 18, United States Code, Section 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 24, 2008, in the Eastern District of Pennsylvania, defendants

**HARVEY PENN and
MIKHAIL ELAM**

knowingly and intentionally possessed with intent to distribute, and aided and abetted the possession with intent to distribute of, a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C), and Title 18, United States Code, Section 2.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 11, 2008, in the Eastern District of Pennsylvania, defendants

**HARVEY PENN,
MIKHAIL ELAM, and
JOHN KERZNER**

knowingly and intentionally possessed with intent to distribute, and aided and abetted the possession with intent to distribute of, a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C), and
Title 18, United States Code, Section 2.

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 21, United States Code, Sections 841(a)(1) and 846, set forth in this indictment, defendants

**HARVEY PENN,
MIKHAIL ELAM, and
JOHN KERZNER**

shall forfeit to the United States of America:

(a) any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses; and

(b) any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property subject to forfeiture.

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL:

FOREPERSON

LAURIE MAGID
Acting United States Attorney